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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,161	02/17/2004	Christian Krebs	LINDE-5 (9978*9)	1262
7590	02/25/2005		EXAMINER	
CONNOLLY BOVE LODGE & HUTZ P.O. BOX 2207 WILMINGTON, DE 19899-2207			LEWIS, AARON J	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/780,161	KREBS, CHRISTIAN
	Examiner	Art Unit
	AARON J. LEWIS	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12/02/2004 (AMENDMENT).
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 4-6,8,9,11-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 4-6,8,9,11-14 and 16-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 16,4-6,8,9,12,13,17-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkin et al. ('675) in view of Henkin et al. ('280).

As to claim 16, Henkin et al. ('675) disclose a method for the metered administration of one or more therapeutically effective gases to a patient, comprising a step to remove harmful or undesired substances from the gas-carrying system or from parts of the gas-carrying system, characterized in that the therapeutically effective gases are selected from the group consisting of NO, CO, CO<sub>2</sub> mixtures used to stimulate breathing, H<sub>2</sub> mixtures, N<sub>2</sub>O mixtures, SF<sub>6</sub> mixtures, and nitrosoethanol, and the removal step comprising purging with at least one other gas or gas mixture selected from the group consisting of air, O<sub>2</sub>, N<sub>2</sub>, Ar, Xe, He, SF<sub>6</sub>, mixtures thereof and other gases which do not have a therapeutic effect.

Henkin et al. ('675) is not specific as to the particular constituency of the flush/purge gas supplied during actuation of flush button (142); however, Henkin et al. ('280) teach the flush/purge gas to be oxygen via inlet tube (200 and col.5, lines 38-39 and col.6, lines 29-35).

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Inasmuch as the purge gas of Henkin et al. ('675) is employed to establish an initial pressure and volume within the patient circuit (col.6, lines 8-11), it would have been obvious to employ a breathable life sustaining gas such as oxygen because it would have been safe for a patient to breathe initially as taught by Henkin et al. ('280).

As to claim 4, Henkin et al. ('675) disclose that the purging or evacuation step is one of time-controlled, sensor-controlled and event controlled (Table IA). More specifically, line 1 of the table discloses the flush button to be depressed when the detachable circuit is seated; therefore, the purging step is event controlled.

As to claim 5, Henkin et al. ('675) disclose that the parts of the system to be cleared comprise feed lines, valves, tubing, dead spaces, and patient intake elements (col.5, line 66-col.6, line 11 and fig.1).

As to claim 6, Henkin et al. ('675) disclose the patient intake elements are selected from the group consisting of nosepieces and masks (508 and col.20, lines 54-55).

As to claim 8, Henkin et al. ('675) disclose that the purging or evacuation step is one of time-controlled, sensor-controlled and event controlled (Table IA). More specifically, line 1 of the table discloses the flush button to be depressed when the detachable circuit is seated; therefore, the purging step is event controlled.

As to claim 9, Henkin et al. ('675) disclose that the parts of the system to be cleared comprise feed lines, valves, tubing, dead spaces, and patient intake elements (col.5, line 66-col.6, line 11 and fig.1).

As to claim 17, Henkin et al. ('675) also disclose the step of evacuation (via evacuation lines (130, 134,138,157 and col.5, lines 55-56) and an evacuation unit and a connection to an existing evacuation line) in addition to purging.

Claim 18 is substantially equivalent in scope to claim 16 and is included in Henkin et al. ('675) in view of Henkin ('280) for the reasons set forth above with respect to claim 16.

Claim 19 is substantially equivalent in scope to claim 16 and is included in Henkin et al. ('675) in view of Henkin ('280) for the reasons set forth above with respect to claim 16. Henkin et al. ('675) also disclose a device for the metered administration of one or more therapeutically effective gases to a patient, comprising a device to remove harmful or undesired substances (col.5, lines 55-56 and line 66-col.6, line 11), characterized by one of a second gas line (in fig.1 note one of "fresh gas", "h.p. gas" and "auxillary fresh gas") and an evacuation line (130, 134,138,157) in addition to a first gas line (in fig.1 note one of "fresh gas", "h.p. gas" and "auxillary fresh gas"). Further, Henkin et al. ('675) teach the evacuation line (col.5, lines 55-56) comprises one of an evacuation unit and a connection to an existing evacuation line.

As to claims 20 and 21, Henkin et al. as discussed above with respect to claim 19, teach the removal device includes the second gas line (in fig.1 note one of "fresh gas", "h.p. gas" and "auxillary fresh gas") and the removal device also includes the evacuation line (130,134,138,157).

As to claim 12, Henkin et al. ('675) teach a compressed gas connection (e.g. high pressure gas source).

As to claim 13, Henkin et al. ('675) teach the evacuation line (col.5, lines 55-56) comprises one of an evacuation unit and a connection to an existing evacuation line.

3. Claim 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henkin et al. ('675) in view of Henkin et al. ('280) as applied to claims 16,4-6,8,9,12,13,17-21 above, and further in view of Heim et al. ('924).

The difference between Henkin et al. ('675) as modified by Henkin et al. ('280) and claim 11 is an express recitation of the inclusion of a flowmeter and pressure guage. It is submitted that the use of flowmeters and pressure gauges are commonplace on anesthesia machines and ventilators for the measurement of gas flow rates and the measurement of the pressure of gases being supplied to patients in the respiratory art and to include both sensors on the apparatus of Henkin et al. would have been obvious; otherwise, resort is had to Heim et al. in a ventilator system which teaches the use of both flowmeters and pressure gauges (fig.2).

As to claim 14, Henkin et al. ('675) teach the evacuation line (col.5, lines 55-56) comprises one of an evacuation unit and a connection to an existing evacuation line.

#### ***Response to Arguments***

4. Applicant's arguments filed 12/02/2004 have been fully considered but they are not persuasive. Applicant's arguments that the claims as amended exclude anesthetic gases is disagreed with because N<sub>2</sub>O is a well known anesthetic gas. Inasmuch as Henkin et al. ('675) expressly disclose the administration of anesthesia, it would have been obvious to employ the Henkin et al. device to deliver any well known anesthetic including N<sub>2</sub>O.

Applicant's arguments regarding claim 19 specifically with regard to the structure of the removal device including a second gas line which would permit purging or an evacuation line are not persuasive because Henkin et al. ('675) as discussed above with respect to claim 19, also teach the removal device including a second gas line (in fig.1 note one of "fresh gas", "h.p. gas" and "auxillary fresh gas") which would permit purging or an evacuation line (130,134,138,157).

***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

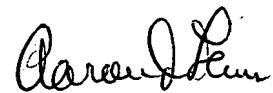
Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (571) 272-4795. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HENRY A. BENNETT can be reached on (571) 272-4791. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



AARON J. LEWIS  
Primary Examiner  
Art Unit 3743

Aaron J. Lewis  
February 22, 2005